

TESTIMONY ON HB 548

Presented by Anne Cossitt, on behalf of Musselshell County

03-11-15

Hello, my name is Anne Cossitt. I am a professional planner and have been providing subdivision review and land use planning in Montana counties for more than 20 years. I am currently the subdivision administrator for Golden Valley and Musselshell Counties. I am here today at the request of Musselshell County Attorney Kent Sipe.

As written, this bill could have severe unintended consequences. The bill in essence appears to codify the Braach case in Missoula County. Braach v. Missoula County went to the Montana Supreme Court which cited the unique factors at play in this case and specifically limited their decision to Missoula County only and precluded the use of the opinion as a precedent elsewhere in Montana.

Under Montana law, the county attorney is required to compel compliance if transfers involve parcels that do not comply with the Montana Subdivision and Platting Act. Musselshell County Attorney Kent Sipe urges you to consider that HB 548 as written could affect dozens of parcels in Musselshell County that were filed as mortgage exemptions with the specific intent of evading the law.

Consider the following example, for which handouts are provided to you.

On June 9, 1997, Lawrence and Carole Zimmerman were the owners who signed Plat No. 1997-10-CCR-ME, 1997, which shows Tracts 1 and 2 for purposes of mortgage. The Zimmermans signed the following statement:

*I certify the purpose of this survey is to provide a graphic representation of that portion of a parcel that is being held as collateral for a construction mortgage, construction lien or construction trust indenture. This document may not be used as reference for any subsequent conveyance except to the lien holder through a foreclosure sale or transfer in lieu thereof, therefore the survey is exempt from review as a subdivision pursuant to 76-3-201(2)MCA.*

On June 17, just 1 week after the survey was recorded and without any foreclosure action, the Zimmermans entered into a contract for deed to sell the land. On June 24, a week later, they conveyed ownership of both Tracts 1 & 2 to Michael and Hettie Fitzgerald, husband and wife. On August 3, 2005, the Fitzgeralds sold Tracts 1 & 2 to William C. Lage. In fact, the land transferred should never have been described as Tracts 1 & 2 of Plat No. 1997-10-CCR in the warranty deeds, as specifically prohibited by the landowners' statement and the intent of the mortgage exemption provisions of Montana state law.

In this particular case, the entire portion was transferred down the line to subsequent owners. In other cases in Musselshell County, the landowners kept one portion and sold another or perhaps sold the "mortgage exemption" parcel to one party and the "remaining portion" to another party. Musselshell

County does not after-the-fact require two different landowners to aggregate land to rectify the original evasion.

But we do want to make absolutely certain that no one is going to think they have two parcels when the "mortgage exemption" and "remaining parcel" have remained intact.

We do not believe that is the intent of HB548, but we believe that the language is not absolutely clear and subject to interpretation.

Musselshell County Attorney Kent Sipe wrote me this morning:

"If the bill is clear that properties separately or independently conveyed prior to 2003 then we can work with that. But the language should be clear."

The bill should be absolutely clear that when the "mortgage exemption" and "remaining portion" were never separately conveyed, that there is only one parcel, not two.

On a personal note, I have worked in many counties in the state, approximately half of the 56 counties. I can assure you that whether by intent or by accident, mortgage exemptions have resulted in issues similar to that in Musselshell County. No one to my knowledge has ever seen a need to "fix" the law as currently written, until now. The bill appears to be a reaction to the Braach case, a statewide fix for a single county.

On behalf of Musselshell County and County Attorney Kent Sipe, thank you.

ZIMMERMAN SUBDIVISION

PLAT NO. 1997-10 - CCR - ME

LOCATED IN SECTION 36, TOWNSHIP 8 NORTH, RANGE 25 EAST, P.M.M.  
MUSSELSHELL COUNTY, MONTANA

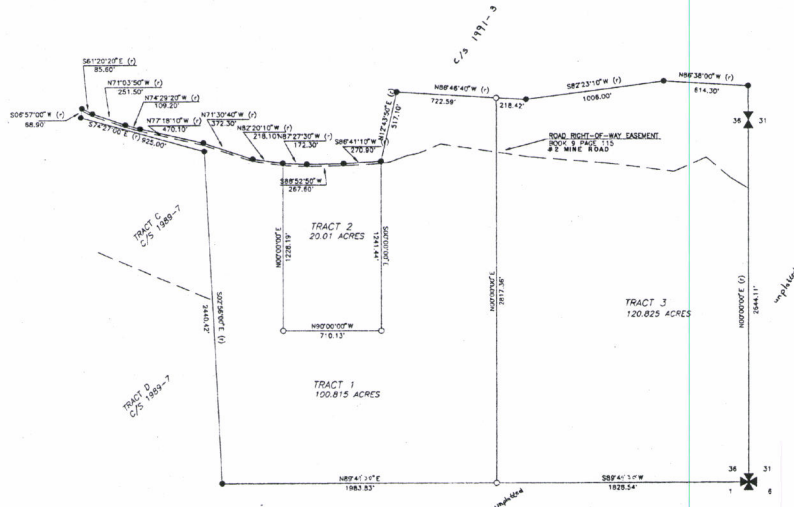
BEND AN AMENDMENT TO TRACT A2 CERTIFICATE OF SURVEY 1991-3

FOR: LAWRENCE J. AND CAROLE S. ZIMMERMAN

BY: BULL MOUNTAIN SURVEYING

IN: NOVEMBER, 1996

PURPOSE OF THIS SURVEY: MAKE ADDITIONAL TRACTS OF LAND AND A MORTGAGE SURVEY



LEGAL DESCRIPTION

BEING A TRACT OF LAND IN SECTION 36, T.8 N., R. 25 E., P.M.M., MUSSELSHELL COUNTY, MONTANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 36, BEING A Q.L. BRASS CAP, THENCE NORTH ON AND ALONG THE EAST LINE OF SAID SECTION 36, 264.11' TO THE EAST 1/4 CORNER THENCE CONTINUING NORTH 251.9'; THENCE N. 80°38'00" W. 614.3'; THENCE S. 82°21'10" W. 1068.2'; THENCE N. 85°48'40" W. 941.0'; S. 12°43'50" W. 517.1'; S. 86°41'10" W. 270.9'; S. 89°52'50" W. 267.5'; N. 62°32'00" W. 173.1'; N. 82°20'10" W. 218.1'; N. 71°35'40" W. 372.3'; N. 77°18'10" W. 470.1'; N. 74°22'20" W. 109.2'; N. 71°03'30" W. 251.5'; N. 61°20'20" W. 65.9'; S. 85°10'00" W. 68.9'; S. 34° 27'00" E. 828.0'; S. 75°50'00" E. 2440.42'; N. 89°44'30" E. 3815.31' TO THE POINT OF BEGINNING CONTAINING 241.65 ACRES, MORE OR LESS

MORTGAGE EXEMPTION

TRACT 2

I certify the purpose of this survey is to provide a graphic representation of that portion of a parcel that is being held as collateral for a construction mortgage, construction lien or construction trust indenture. This document may not be used as reference for any subsequent conveyance except to the lien holder through a foreclosure sale or transfer in lieu thereof; therefore survey is exempt from review as a subdivision pursuant to 76 - 3 - 201 (2) MCA.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES EXEMPTION TRACTS 1, 2, AND 3

I hereby certify that the purpose of this division of land is to create a parcel of land greater than twenty acres in size which must be surveyed but is exempt from review by the Department of Health and Environmental Sciences

LAWRENCE J. ZIMMERMAN CAROLE S. ZIMMERMAN

STATE OF FLORIDA )  
COUNTY OF LEE SS )

On this 12th day of DECEMBER, 1996, before me, the undersigned, a Notary Public for the State of Montana, personally appeared LAWRENCE J. ZIMMERMAN known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

NOTARY PUBLIC FOR THE STATE OF FLORIDA  
RESIDING AT 15133 N.W. 10th Ave., Dade County, FL 33465  
MY COMMISSION EXPIRES 11-11-2004

STATE OF FLORIDA )  
COUNTY OF LEE SS )

On this 12th day of DECEMBER, 1996, before me, the undersigned, a Notary Public for the State of Montana, personally appeared CAROLE S. ZIMMERMAN known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

NOTARY PUBLIC FOR THE STATE OF FLORIDA  
RESIDING AT 15133 N.W. 10th Ave., Dade County, FL 33465  
MY COMMISSION EXPIRES 11-11-2004

CLERK AND RECORDER

Filed on the 9 day of June 1997 at 3:30 o'clock P.M.

Jane P. Mang  
COUNTY CLERK AND RECORDER

TREASURER'S CERTIFICATION

I hereby certify that all real property taxes and special assessments assessed and levied on the land to be divided have been paid

Mary P. Nelson  
COUNTY TREASURER

COUNTY COMMISSIONERS' APPROVAL

The County Commission of Musshell County, Montana does hereby certify that it has examined this subdivision plat and having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this 9th day of June, 1997.

Ben W. Cobb  
commissioners signature

ATTY:  
Jane P. Mang  
Clerk and Recorder

LAND SURVEYORS' CERTIFICATE

STATE OF MONTANA ) SS  
COUNTY OF MUSSELSHELL )

THIS IS TO CERTIFY THAT I, Robert V. Mihalovich, a Montana Registered land surveyor, Registration NO 113789, State of Montana, performed the attached survey and that said survey is true and complete as shown and that the monuments found and set are of the character and occupy the positions shown thereon.

Dated this 18 day of March, 1997

Robert V. Mihalovich  
113789



## NOTICE OF UNRECORDED CONTRACT FOR DEED

THIS AGREEMENT, made and entered into this 17 day of June, 1997, by and between LAWRENCE J. ZIMMERMAN and CAROLE S. ZIMMERMAN, husband and wife, as joint tenants with the right of survivorship, of P.O. Box 1329, Fort Meyers, Florida 33902, hereinafter referred to as Parties of the First Part, and MICHAEL F. FITZGERALD and HETTIE A. FITZGERALD, husband and wife, as joint tenants with the right of survivorship and not as tenants in common, of Roundup, Montana, 59072, as Parties of the Second Part,

## WITNESSETH:

17 That an unrecorded contract for deed was entered into on the 17 day of June, 1997, by and between First Parties and Second Parties, whereby First Parties agree to sell and Second Parties agree to buy the real property situated in Musselshell County, Montana, to - wit:

That part of Section 36, Township 8 North, Range 25 East, P.M.M., Musselshell County, Montana, more particularly shown and described in Tracts 1 and 2 of Zimmerman Subdivision, Plat No. 1997-10-CCR-ME, according to the plat thereof on file in the office of the Clerk and Recorder Musselshell County, Montana, under Document No. 245667.

Excepting and reserving unto First Parties, their heirs, personal representatives and assigns, a right of ingress and egress on the existing road/s into the subject property.

Together with the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, including but not limited to all water and mineral rights vested in First Parties.

TO HAVE AND TO HOLD unto the Second Parties, and their heirs and assigns forever, SUBJECT HOWEVER, to the following reservations and exceptions:

- (a) Reservations and exceptions contained in the patents from the United States of America;
- (b) Existing rights of way and easements for roads, ditches, canals, power lines and telephone lines;
- (c) Mineral and royalty interest/s in said lands owned by others than the Seller;
- (d) Taxes and assessments for the year 1996 and subsequent years.

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Either the First Party or the Second Parties named above at their addresses above will provide a full and complete copy of the contract for deed without cost upon request of any person.

IN WITNESS WHEREOF, both parties have hereunto set their hands and seals the day and year first above written.

Lawrence J. Zimmerman  
LAWRENCE J. ZIMMERMAN (First Party)

Carole S. Zimmerman  
CAROLE S. ZIMMERMAN (First Party)

Michael F. Fitzgerald  
MICHAEL F. FITZGERALD (Second Party)

Hettie A. Fitzgerald  
HETTIE A. FITZGERALD (Second Party)

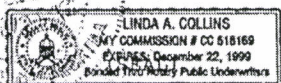
STATE OF FLORIDA

COUNTY OF LEE

SS.

On this 24<sup>th</sup> day of JUNE, 1997, before me, the undersigned, a Notary Public for the State of Florida, personally appeared LAWRENCE J. ZIMMERMAN and CAROLE S. ZIMMERMAN, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.  
(Personally known to me). L.A.C.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Linda A. Collins  
Notary Public for the State of Florida  
Residing at 2421 Crystal Dr., Ft. Myers, FL 33907  
My commission expires: 12/22/99

STATE OF MONTANA

COUNTY OF Musselshell  
~~Yellowstone~~

SS.

On this 17 day of JUNE, 1997, before me, the undersigned, a Notary Public for the State of Montana, personally appeared MICHAEL F. FITZGERALD and HETTIE A. FITZGERALD, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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Recorded June 30, 1997

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23-2451

### WARRANTY DEED

MICHAEL F. FITZGERALD and HETTIE A. FITZGERALD,  
498 Edgewater, Spring Creek, NV 89815

in consideration of Ten Dollars (\$10.00) and other valuable consideration now paid, which constitutes adequate and full consideration in money or money's worth, the receipt of which is hereby acknowledged grant, convey, transfer, sell, and warrant to,

WILLIAM C. LAGE, 11061 Ohio Ave, Los Angeles, CA 90025

that real property situated in Musselshell County, State of Montana, described as follows:

That part of Section 36, Township 8 North, Range 25 East, of the Principal Montana Meridian, in Musselshell County, Montana, described as Tracts 1 and 2, of Zimmerman Subdivision, Plat. 1997-10-CCR-ME on file in the office of the Clerk and Recorder of said County, under Document #245667.

SUBJECT TO the following:

- (a) covenants, restrictions, reservations, and exceptions of record;
- (b) taxes and assessments for 2005 and subsequent years;
- (c) easements and rights of way;
- (d) apparent interests and rights;
- (e) discrepancies, conflicts in boundary lines, shortage in area and encroachments;
- (f) water rights, claims or title to water;
- (g) zoning, use, sanitary, and environmental ordinances, regulations and laws;

This Deed is given with the usual covenants more particularly stated in MCA §§30-11-109 and 30-11-110, EXCEPTING therefrom the above referenced paragraphs (a), (b), (c), (d), (e), (f), and (g).

WITNESS my hand this 3<sup>rd</sup> day of August, 2005.

Michael F. Fitzgerald  
Michael F. Fitzgerald

Hettie A. Fitzgerald  
Hettie A. Fitzgerald